



Federal Housing Finance Board

EQUAL EMPLOYMENT OPPORTUNITY HANDBOOK

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APPROVED BY: _____/s/_____ DATE: 04-02-03
John T. Korsmo, Chairman

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**Federal Housing Finance Board
Equal Employment Opportunity Handbook**

Overview

I. What does this Handbook cover?

This Handbook covers the Federal Housing Finance Board's (Finance Board or Agency) Equal Employment Opportunity (EEO) Program, which includes the Finance Board's EEO Policies and the procedures Finance Board employees and applicants for employment must follow to file an EEO complaint.

The following are incorporated as part of this Handbook:

Complaint Processing Procedures.....	Appendix A
Alternative Dispute Resolution Policy.....	Appendix B
Reasonable Accommodation Policy.....	Appendix C
Sexual Orientation Discrimination Guidance.....	Appendix D

II. What is the authority for issuing this Handbook?

This Handbook serves as a supplement to Part 1614 of the Equal Employment Opportunity Commission's (EEOC) regulations. See 29 C.F.R. Part 1614. The basic authority for issuing this Handbook and developing an EEO Program is derived from:

- A. Title VII of the Civil Rights Act of 1964, as amended; 42 U.S.C. 2000e et. seq.
- B. The Age Discrimination in Employment Act (ADEA) of 1967, as amended.
- C. The Rehabilitation Act of 1973, as amended.
- D. The Fair Labor Standards Act of 1938, as amended (The Equal Pay Act (EPA)).
- E. Executive Orders 12067, 12106 and 11478, as amended.
- F. EEOC Regulations, Guidelines, and Directives.

III. What are the objectives of the Finance Board's EEO Program?

- A. To provide equal employment opportunity to all employees and applicants.
- B. To prohibit discrimination because of race, color, sex, religion, age¹, national origin, reprisal or disability².
- C. To promote affirmative employment within the Finance Board's organizational structure.
- D. To ensure Finance Board supervisors actively support the Finance Board's EEO Program and are attentive to the EEO impact of all decisions made in their respective areas of responsibility.
- E. To provide the opportunity for all employees to participate in special emphasis programs in an effort to recognize and celebrate our nation's history and cultural heritage.

IV. Who is responsible for the Finance Board's EEO Program?

- A. The Chairperson has the overall responsibility for the Finance Board's EEO Program and shall:
 - 1. Provide personal leadership in establishing, maintaining and carrying out a continuing Program designed to promote EEO in every aspect of the Finance Board's operations;
 - 2. Ensure that employment discrimination complaints are processed fairly, promptly and in strict accordance with the complaint processing procedures set forth in the EEOC's regulations, guidelines and directives;
 - 3. Provide sufficient resources to carry out a positive, innovative and continuing EEO Program; and
 - 4. Periodically review the EEO Program to ensure that its direction, capability and results are consistent with the stated EEO objectives of the Finance Board.

¹ Age is an inclusive term, which means an age of at least 40 years.

² An individual with a disability(ies) means one who: (1) has a physical or mental impairment that substantially limits one or more of such person's major life activities, (2) has a record of such an impairment, or (3) is regarded as having such impairment. See 29 C.F.R. § 1614.203(a)(1). The EEOC defines "Major Life Activities" as "functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working." See 29 C.F.R. §1614.203(a)(3). Courts interpreting the Rehabilitation Act of 1973 also have found that major life activities include sitting, standing, and reading. The EEOC added to this previous list mental and emotional processes, such as thinking, concentrating and interacting with other people.

- B. The EEO Director, reporting directly to the Chairperson, has the responsibility for administering the Finance Board's EEO Program and shall:
1. Develop policies and procedures as part of the Finance Board's EEO Program and implement the Program throughout the Finance Board;
 2. Recommend improvements or corrections to the Finance Board's EEO Program to the Chairperson as appropriate;
 3. Provide for pre-complaint counseling, the investigation of complaints of alleged discrimination within the Finance Board and the issuance of decisions on EEO complaints;
 4. Assure that individual complaints are fairly and thoroughly investigated and that final action is taken in a timely manner;
 5. Prepare reports required by the EEOC; and
 6. Recommend periodic EEO training for Finance Board employees, in conjunction with the Office of Management.
- C. All supervisors share responsibility for applying the principles inherent in the Finance Board's EEO objectives fairly and consistently. Management performance in this area will be evaluated as it is on other major Finance Board objectives.
- D. All members of the board of directors, supervisors and employees are responsible for:
1. Maintaining an attitude of mutual respect, courtesy and cooperation towards all employees;
 2. Providing equal treatment of, and service to, all persons with whom they deal while performing official duties; and
 3. Cooperating fully with the EEO Director, EEO counselors, complaint investigators, Finance Board representatives appointed by the Office of General Counsel and EEOC-appointed Complaints Examiners or Administrative Judges, by providing any information requested of them in connection with their duties, except when the information is confidential for personal privacy purposes.³

³ The Privacy Act of 1974 does not preclude the Finance Board from providing authorized counselors, investigators, and representatives any personnel information relative to complaint issues that are brought to management's attention through this process.

V. How will Finance Board employees receive information about the EEO Program?

Finance Board employees will be informed of the Finance Board's EEO Program by memoranda, e-mail, notices on bulletin boards, and periodic meetings and presentations.

VI. What EEO information does the Finance Board collect and how does it use the information?

The Finance Board, pursuant to EEOC regulations, collects and maintains employment information on the race, national origin, sex and disability identification of its employees. Data on race, national origin, and sex is collected by voluntary self-identification. If an employee refuses to provide the information, the Finance Board must make a visual identification and inform the employee of the data it will be reporting.

The information collected is disclosed only in the form of gross statistics. Only those categories of race and national origin prescribed by the EEOC are used and only the specific procedures for the collection and maintenance of data that are prescribed by the EEOC are used.

The Finance Board may only use the data in studies and analyses that contribute affirmatively to achieving the objectives of the EEO Program. The Finance Board does not establish a quota for the employment of persons on the basis of race, color, religion, sex, disability or national origin.

**Federal Housing Finance Board
Equal Employment Opportunity Handbook**

Appendix A - Complaint Processing Procedures

I. What does Appendix A cover? This Appendix covers the procedure the Finance Board uses to process employment discrimination complaints, and the procedure Finance Board employees and applicants must use to file employment discrimination complaints on the basis of:

- A. Race.
- B. Color.
- C. Religion.
- D. Sex.
- E. National origin.
- F. Age.
- G. Physical or mental disability.
- I. Violation of the Equal Pay Act of 1938, as amended.
- J. Retaliation as defined in 29 C.F.R. § 1614.101(b).

II. EEO Counseling Process

- A. What is EEO counseling? EEO counseling is the first step in the EEO complaint process and is part of the federal system for processing and resolving employee and applicant EEO concerns.
- B. What is an EEO counselor? An EEO counselor is a neutral Finance Board employee who meets with aggrieved individuals and conducts the pre-complaint processing.
- C. How is a complaint of discrimination initiated? If you believe you have been discriminated against, you must contact a Finance Board EEO counselor or the EEO Director within 45 calendar days of the alleged discriminatory act⁴. The EEO Director will assign an EEO counselor to you. The names of the EEO Director and counselors are posted on the Finance Board Bulletin Board on the first floor and on the Finance Board's intranet site.

⁴ The Finance Board shall extend the 45-day time limit if you show that: you were not notified of the time limits and were not otherwise aware of them, you did not know and reasonably should not have known that the discriminatory matter or personnel action occurred, despite due diligence you were prevented by circumstances beyond your control from contacting the counselor within the time limits. See 29 C.F.R. § 1614.105(a)(2).

- D. What are the duties of an EEO counselor? At the initial counseling session, or as soon thereafter as possible, the EEO counselor will interview you and give you written notice of your rights and responsibilities. See Attachment 1. The EEO counselor will:
1. Ensure that EEO counseling services are accessible for individuals with disabilities;
 2. Advise you about the EEO complaint process;
 3. Explain the Finance Board's Alternative Dispute Resolution (ADR) program, including the difference between informal resolution attempts through the EEO counseling process and the Finance Board's ADR program;
 4. Determine the claim(s) raised by the aggrieved individual;
 5. Conduct an inquiry during the initial interview to determine jurisdictional questions including the timeliness of the claim and whether it is covered by the laws enforced by the EEOC;
 6. Attempt to resolve the dispute, where ADR is not offered and elected, at the lowest possible level and if the dispute is resolved in counseling the counselor will document the resolution;
 7. Advise you of the right to file a formal discrimination complaint if attempts to resolve the dispute through EEO counseling or ADR fail to resolve the dispute; and
 8. Prepare a Counselor's Report, if a formal complaint is filed, to document that the counselor undertook the required counseling actions and to resolve any jurisdictional questions that arise.
- E. What are the time limits for EEO counseling? The EEO counselor has 30 calendar days⁵ from the date the aggrieved individual makes initial contact with an EEO counselor or the EEO Director to inform the individual about the process and attempt to resolve the matter informally. If the matter is not resolved informally within this time period, the counselor must hold a final interview with the individual and notify them in writing that they have a right to file a formal complaint of discrimination ("Notice of Final Interview and Right to File Formal Complaint").

⁵ The 30-day counseling period may be extended for an additional 60 calendar days: (1) where the aggrieved individual agrees to such extension in writing; or (2) where the aggrieved individual chooses to participate in Alternative Dispute Resolution. If the claim is not resolved before the 90th day, the Notice of Final Interview and Right to File Formal Complaint must be issued to the aggrieved individual. See 29 CFR §§ 1614.105(e) and (f).

- F. What does a Notice of Final Interview and Right to File Formal Complaint include? The Notice of Final Interview and Right to File Formal Complaint informs the aggrieved individual that a complaint must be filed within 15 calendar days of receipt of the notice, identifies the Finance Board official with whom the formal complaint must be filed and informs the aggrieved individual of their duty to notify the Finance Board if they retain counsel or a representative.
- G. When is a Counselor's Report completed? The counselor completes a Counselor's Report if a formal complaint is filed. The Counselor's Report must be done within 15 calendar days after the EEO Director notifies the counselor that a formal complaint has been filed.
- H. Who receives the Counselor's Report? The Counselor's Report is submitted to the EEO Director, the complainant and the complainant's representative, if applicable.
- I. What is included in a Counselor's Report? The Counselor's Report will include:
1. A precise description of the claim(s) and the basis(es) identified by the complainant;
 2. Pertinent documents gathered during the inquiry, if any;
 3. Specific information bearing on the timeliness of the counseling contact;
 4. If timeliness appears to be a factor, an explanation for the delay; and
 5. An indication as to whether an attempt to resolve the complaint was made.

III. Formal Complaints

- A. What is the time frame for filing a formal complaint? A formal complaint must be filed within 15 calendar days of receipt of the Notice of Final Interview and Right to File Formal Complaint.
- B. What must be included in the formal complaint? A formal complaint must be a signed statement from the complainant or the complainant's representative. This statement must be sufficiently precise to identify the complainant and the Agency and to describe generally the actions(s) or practice(s) that form the bases of the complaint. The complaint must also contain a telephone number and address where the complainant or the representative can be contacted.

- C. What occurs after the formal complaint is submitted to the Finance Board?
1. The Finance Board will acknowledge receipt of the complaint in writing and inform the complainant of the date on which the complaint was filed.
 2. A written Counselor's Report will be provided to the Agency and the complainant within 15 days after the EEO counselor has been notified that a formal complaint has been filed.
 3. Within a reasonable time after receipt of the Counselor's Report, the Finance Board will send the complainant a letter:
 - a. Stating the claim(s) asserted and what portion will be investigated. The Finance Board will explain the reasons for dismissing any portion of the complaint. (Dismissals are addressed further in Section IV of this document.)
 - b. Advising the complainant that they may submit a statement to the Agency concerning the Finance Board's articulation of the claim.
 - c. Providing the address of the EEOC office where a request for a hearing should be sent.
 - d. Notifying the complainant of their right to appeal the Finance Board's final action or dismissal of a complaint.
 - e. Notifying the complainant that the Finance Board must conduct an impartial and appropriate investigation of the complaint within 180 calendar days of the filing date.
 - f. Notifying the complainant that they may file a civil action in Federal district court on matters raised in the administrative process: (i) within 90 calendar days of receipt of a Final Agency Decision if no appeal has been filed; (ii) after 180 calendar days from the date of filing the complaint if an appeal has not been filed and a Final Agency Decision has not been issued; (iii) within 90 calendar days of receipt of the EEOC's final decision on appeal; or (iv) after 180 days from the date of filing an appeal with the EEOC if there has been no final decision by the EEOC.

D. What is the process for amending a formal complaint?

1. A complainant may amend a complaint at any time prior to the conclusion of the investigation to include issues or claims like or related to those raised in the pending complaint.
2. When a complainant raises a new incident of alleged discrimination during the processing of an EEO complaint, it must be determined whether the new incident:
 - (a) provides additional evidence offered to support the existing claim, but does not raise a new claim in and of itself;
 - (b) raises a new claim that is like or related to the claim(s) raised in the pending complaint; or
 - (c) raises a new claim that is not like or related to the claim(s) raised in the pending complaint.
3. To facilitate such a determination, the complainant must submit a letter to the EEO Director describing the new incident(s) and stating their desire to amend their complaint to include the new incident(s). The EEO Director will review this request and determine the correct handling of the amendment in an expeditious manner.
4. When a complaint has been amended, the Finance Board must complete the investigation within the earlier of 180 calendar days after the last amendment to the complaint, or 360 calendar days after the filing of the original complaint.
5. After requesting a hearing, a complainant may file a motion with the Administrative Judge to amend a complaint to include issues or claims like or related to those raised in the complaint.

IV. **Dismissals of Formal Complaints**

- A. Under what circumstances may the Agency dismiss an entire complaint? Prior to a complainant requesting a hearing, the Agency may dismiss an entire complaint for any of the following reasons:
1. Failure to state a claim, or stating the same claim that is pending or has been decided by the Agency or the EEOC;
 2. Failure to comply with the applicable time limits;

3. Filing a complaint on a matter that has not been brought to the attention of an EEO counselor and which is not like or related to the matters counseled;
 4. Filing a complaint that is the basis of a pending civil action, or which was the basis of a civil action already decided by a court;
 5. Where the complainant has already elected to pursue the matter through an appeal to the Merit Systems Protection Board;
 6. Where the matter is moot or merely alleges a proposal to take a personnel action;
 7. Where the complainant cannot be located;
 8. Where the complainant fails to respond to a request to provide relevant information;
 9. Where the complainant alleges dissatisfaction with the processing of a previously filed complaint;
 10. Where the complaint is part of a clear pattern of misuse of the EEO process for a purpose other than the prevention and elimination of employment discrimination.
- B. Under what circumstances may the Agency partially dismiss a complaint? If the Finance Board believes that some, but not all, of the claims in a complaint should be dismissed for the reasons cited in Section IV.A of this document, it must notify the complainant in writing of the rationale for this determination, identify the allegations that will not be investigated, and place a copy of this notice in the investigative file.
- C. Is a partial dismissal appealable? A partial dismissal shall be reviewable by an EEOC Administrative Judge if a hearing is requested on the remainder of the complaint, but is not appealable until final action is taken by the Finance Board on the remainder of the complaint.

V. Conducting the Investigation

- A. Who is responsible for the investigation? The Finance Board is responsible for conducting an appropriate investigation of complaints filed against the Agency.
- B. What is considered an appropriate investigation? The complaint must be investigated in a manner consistent with the requirements set forth by the EEOC. An appropriate factual record is one that allows a reasonable fact finder to draw conclusions as to whether discrimination occurred.

- C. Does the complainant receive a copy of the investigative file? A copy of the investigative file must be provided to the complainant, along with a notification that, within 30 calendar days of receipt of the file, the complainant has the right to request a hearing and a decision from an EEOC Administrative Judge or may request an immediate final decision from the Finance Board.
- D. When must an investigation be completed? The investigation must be completed within 180 calendar days from the filing of the complaint.
- E. May the length of the investigation be extended? By written agreement, the complainant and the Finance Board may voluntarily extend the time period for not more than an additional 90 calendar days.
- F. When may the Finance Board make an offer of resolution?
 - 1. The Finance Board may make an offer of resolution to a complainant who is represented by an attorney at any time after the filing of a complaint, but not later than the date an Administrative Judge is appointed to conduct a hearing.
 - 2. The Finance Board may make an offer of resolution to a complainant, whether represented by an attorney or not, any time after the parties have received notice that an Administrative Judge has been appointed to conduct a hearing, but not later than 30 days prior to a hearing.
- G. How is an offer of resolution extended? An offer of resolution must be in writing and include a notice explaining the possible consequences of failing to accept the offer. If the complainant fails to accept the offer within 30 calendar days of receipt, and the relief awarded in the final decision on the complaint is not more favorable than the offer, then the complainant shall not receive payment from the Agency of attorney's fees or costs incurred after the expiration of the 30 calendar day acceptance period.

VI. Hearings

- A. What is a hearing? A hearing is an adjudicatory proceeding that completes the process of developing a full and appropriate record. A hearing provides the parties with a fair and reasonable opportunity to explain and supplement the record and, in appropriate instances, to examine and cross-examine witnesses.
- B. What is an Administrative Judge? An EEOC Administrative Judge adjudicates claims of discrimination and issues decisions. Administrative Judge decisions, in non-class action cases, become the final action of the Agency if the Agency does not issue a final order within 40 calendar days of receipt of the Administrative Judge's decision. Once an Administrative Judge is appointed,

the Administrative Judge has full responsibility for the adjudication of the complaint.

- C. When may a complainant request a hearing? A complainant may request a hearing within 30 calendar days after receipt of a copy of the investigative file or at any time after 180 calendar days have elapsed from the filing of the complaint.
- D. How and where does a complainant request a hearing? Requests for hearings must be in writing and sent directly to the EEOC office as indicated in the letter sent to the complainant after the Counselor's Report was completed.
- E. When will an Administrative Judge conduct a hearing? An Administrative Judge will conduct a hearing on the merits of a complaint unless:
 - 1. the parties mutually resolve the complaint and the hearing request is withdrawn;
 - 2. the hearing request is otherwise voluntarily withdrawn;
 - 3. the Administrative Judge dismisses the complaint; or
 - 4. the Administrative Judge determines that material facts are not in genuine dispute and issues an order limiting the scope of the hearing or issues a decision without a hearing.
- F. What is the Finance Board's role in a hearing?
 - 1. The Finance Board must send a copy of the complaint file, including the investigative file, to the EEOC within 15 calendar days of its receipt of a copy of the complainant's request for a hearing or the docketing letter from the EEOC field office, whichever is earlier.
 - 2. The Finance Board is responsible for arranging for an appropriate size room in which to hold the hearing and for ensuring that all approved witnesses, who are Federal employees, are notified of the date and time of the hearing and the approximate time that their presence will be required.
 - 3. The Finance Board will arrange and pay for a verbatim transcript of the hearing proceedings. All documents submitted to, and accepted by the Administrative Judge shall become part of the record. The verbatim transcript(s) must be delivered to the Administrative Judge within 10 calendar days after the close of the hearing.

- G. Are hearings public? Hearings are a part of the investigative process and access to the hearing room and the record of the hearing shall be restricted in accordance with EEOC's regulations.
- H. What is Discovery? Discovery is a pre-hearing procedure to enable a party to obtain relevant information for preparation of the party's case. Both parties are entitled to reasonable development of evidence on issues relevant to the issues raised in the complaint, but the Administrative Judge may limit the quantity and timing of discovery.
- I. When does the Administrative Judge make a decision? The Administrative Judge will issue a decision on a complaint, and shall order appropriate remedies and relief when discrimination has been found, within 180 calendar days of receipt of the complaint file from the Agency unless the Administrative Judge in his or her discretion makes a written determination that good cause exists for extending the time for issuing a decision. The Administrative Judge will send copies of the hearing record, the transcript and the decision to the parties. If the Finance Board does not issue a final order within 40 calendar days of receipt of the Administrative Judge's decision, then the decision becomes the final action by the Finance Board in the matter.

VII. Finance Board Final Actions

- A. What is a Final Action? When an Administrative Judge issues a decision, the Finance Board will take final action on the complaint by issuing a final order.
- B. What actions does the Finance Board take when an Administrative Judge has issued a decision? When an Administrative Judge has issued a decision (either a dismissal, a summary judgment decision or a decision following a hearing), the Finance Board must take final action on the complaint by issuing a final order within 40 calendar days of receipt of the hearing file and the Administrative Judge's decision. The final order must notify the complainant whether or not the Finance Board will fully implement the decision of the Administrative Judge, and will contain notice of the complainant's right to appeal to the EEOC or to file a civil action. If the final order does not fully implement the decision of the Administrative Judge, the Finance Board must simultaneously file an appeal with the EEOC and attach a copy of the appeal to the final order.
- C. What actions does the Finance Board take when an Administrative Judge has not issued a decision? When an Administrative Judge has not issued a decision (i.e., when the Finance Board dismisses an entire complaint pursuant to EEOC regulations, receives a request for an immediate final decision, or does not receive a reply to the notice providing the complainant the right to either request a hearing or an immediate final decision), the Finance Board must take final action by issuing a final decision. The Finance Board's final decision will

consist of findings by the Finance Board on the merits of each issue in the complaint. Where the Finance Board has not processed certain allegations in the complaint for procedural reasons as set forth in EEOC regulations, the Agency must provide the rationale for its decision not to process the allegations. The Finance Board's decision must be issued within 60 calendar days of receiving notification that the complainant has requested an immediate final decision. The Finance Board's decision must contain notice of the complainant's right to appeal to the EEOC, or to file a civil action in federal court.

VIII. Appeals to the EEOC

- A. What types of appeals may be brought to the EEOC? Several types of appeal may be brought to the EEOC.
1. A complainant may appeal the Finance Board's final action or dismissal of a complaint within 30 calendar days of receipt.
 2. If the Finance Board's final action and order do not fully implement the Administrative Judge's decision, the Finance Board must simultaneously file an appeal to the EEOC.
 3. If the complaint is a class action, the class agent or the Finance Board may appeal an Administrative Judge's decision accepting or dismissing all or a part of the class complaint. A class member may appeal a final decision on an individual claim for relief pursuant to a finding of class-wide discrimination. Finally, both the class agent and the Finance Board may appeal from an Administrative Judge's decision on the adequacy of a proposed settlement of a class action.
- B. How is an appeal filed? Appeals must be filed with the EEOC's Office of Federal Operations. Any statement or brief on behalf of a complainant in support of an appeal must be submitted to the EEOC's Office of Federal Operations within 30 calendar days of filing the notice of appeal. Any statement or brief on behalf of the Finance Board in support of its appeal must be filed within 20 calendar days of filing the notice of appeal. The Finance Board must submit the complaint file to the EEOC's Office of Federal Operations within 30 calendar days of initial notification that the complainant has filed an appeal or within 30 calendar days of submission of an appeal by the Finance Board. Any statement or brief in opposition to an appeal must be submitted to the EEOC's Office of Federal Operations and served on the opposing party within 30 calendar days of receipt of the statement or brief supporting the appeal, or, if no statement or brief supporting the appeal has been filed, within 60 calendar days of receipt of the appeal.

- C. What happens if either party to an appeal fails to comply with the requirements of the EEOC's regulations? If either party to an appeal fails without good cause shown to comply with the requirements of the EEOC's regulations or to respond fully and in timely fashion to requests for information, the EEOC's Office of Federal Operations will, in appropriate circumstances:
1. Draw an adverse inference that the requested information would have reflected unfavorably on the party refusing to provide the requested information;
 2. Consider the matters to which the requested information or testimony pertains to be established in favor of the opposing party;
 3. Issue a decision fully or partially in favor of the opposing party; or
 4. Take such other actions as appropriate.
- D. What are the Administrative Judge's decisions based on? The decision on an appeal from the Finance Board's final action is based on a de novo (i.e., new) review, except that the review of the factual findings in a decision by an Administrative Judge is based on a substantial evidence standard of review. This means that if a reasonable person could find the facts in the same way, the Administrative Judge will sustain the Finance Board's final action.
- E. May parties request that the EEOC reconsider its decision? A party may request that the EEOC reconsider its decision within 30 calendar days of receipt of the EEOC's decision. Such requests are not a second appeal, and will be granted only when the previous EEOC decision involved a clearly erroneous interpretation of material fact or law; or when the decision will have a substantial impact on the policies, practices or operations of the Finance Board.

IX. Civil Actions

- A. Title VII, Civil Rights Act of 1964.
1. A complainant who has filed an individual complaint, an agent who has filed a class complaint or a claimant who has filed a claim for individual relief pursuant to a class complaint is authorized under Title VII to file a civil action in an appropriate U.S. District Court.

2. Under the Age Discrimination in Employment Act, a complainant may proceed directly to federal court after giving the EEOC notice of intent to sue. An Age Discrimination in Employment Act complainant who initiates the administrative process pursuant to the EEOC's regulations may also file a civil action within the following frames.
 - (a) Within 90 calendar days of receipt of the final action where no administrative appeal has been filed;
 - (b) After 180 calendar days from the date of filing a complaint if an administrative appeal has not been filed and final action has not been taken;
 - (c) Within 90 calendar days of receipt of the EEOC's final decision on an appeal; or
 - (d) After 180 calendar days from the filing of an appeal with the EEOC if there has been no final decision by the EEOC.

B. Title VII, Civil Rights Act of 1964 and the Rehabilitation Act of 1973.

1. Prior to filing a civil action under Title VII of the Civil Rights Act of 1964 or the Rehabilitation Act of 1973, a complainant must first exhaust the administrative process set out in the EEOC's regulations. "Exhaustion" for the purposes of filing a civil action may occur at different stages of the process.
2. The EEOC regulations provide that civil actions may be filed in an appropriate federal court within the same time frames described in Section IX.A.2 above.

C. Equal Pay Act. Under the Equal Pay Act, a complainant may file a civil action within two years (three years for willful violations), regardless of whether the complainant has pursued an administrative complaint.

D. Effect of filing a civil action. Filing a civil action terminates EEOC processing of an appeal.

X. Class Complaints

- A. What is a Class? A "class" is a group of employees, former employees or applicants for employment who, it is alleged, have been or are being adversely affected by the Finance Board's personnel management policy or practice that discriminates against the group on the basis of their race, color, religion, sex, national origin, age or disability.

- B. What is a Class Complaint? A “class complaint” is a written complaint of discrimination filed on behalf of a class by the agent of the class alleging that the class is so numerous that a consolidated complaint of the members of the class is impractical; there are questions of fact common to the class; the claims of the agent of the class are typical of the claims of the class; and the agent of the class, or if represented, the representative, will fairly and adequately protect the interests of the class complaint.
- C. What is an Agent of the Class? An “agent of the class” is a class member who acts for the class during the processing of the class complaint.
- D. Are class complaints processed differently than individual complaints? Class complaints of discrimination are processed differently than individual complaints. The employee or applicant who wishes to file a class complaint must first seek counseling and be counseled, just like an individual complaint. However, once counseling is completed the class complaint is not investigated by the Finance Board. Rather, the complaint is forwarded to the EEOC, where an EEOC Administrative Judge is appointed to make the decision to accept or dismiss the class complaint. The Administrative Judge examines the class to determine whether it meets the class certification requirements of numerosity, commonality, typicality, and adequacy of representation. The Administrative Judge may issue a decision dismissing the class because it fails to meet any of these class certification requirements, as well as for any of the reasons for dismissal of individual complaints.
- E. May a class complaint begin as an individual complaint? A class complaint may begin as an individual complaint of discrimination. At a certain point, it may become evident that there are many more individuals than the complainant affected by the issues raised in the individual complaint. EEOC’s regulations provide that a complainant may move for class certification at any reasonable point in the process when it becomes apparent that there are class implications to the claims raised in an individual complaint.
- F. What occurs after the Administrative Judge makes a decision? The Administrative Judge transmits the decision to accept or dismiss a class complaint to the class agent and the Finance Board. The Finance Board must then take final action by issuing a final order within 40 calendar days of receipt of the Administrative Judge’s decision. The final order must notify the agent whether the Finance Board will implement the decision of the Administrative Judge. If the Finance Board’s final order does not implement the Administrative Judge’s decision, the Finance Board must simultaneously appeal the Administrative Judge’s decision to the EEOC’s Office of Federal Operations. A copy of the Finance Board’s appeal must be appended to the Agency’s final order.

- G. What occurs if the Administrative Judge dismisses the complaint? A dismissal of a class complaint shall inform the class agent either that the complaint is being filed on that date as an individual complaint and processed accordingly, or that the complaint is also dismissed as an individual complaint. In addition, a dismissal must inform the class agent of the right to appeal to the EEOC's Office of Federal Operations or to file a civil action in federal court.
- H. What occurs if the Administrative Judge accepts the class complaint? When a class complaint is accepted, the Finance Board must use reasonable means to notify the class members of the acceptance of the class complaint, a description of the issues accepted as part of the complaint, an explanation of the binding nature of the final decision or resolution on the class members, and the name, address and telephone number of the class representative. In lieu of an investigation by the Finance Board, an EEOC Administrative Judge develops the record through discovery and a hearing. The Administrative Judge then issues a recommended decision to the Finance Board. Within 60 calendar days of receipt of the Administrative Judge's recommended decision on the merits of the class complaint, the Finance Board must issue a final decision that either accepts, rejects or modifies the Administrative Judge's recommended decision. If the Finance Board fails to issue such a decision within that time frame, the Administrative Judge's recommended decision becomes the Finance Board's final decision in the class complaint.
- I. What occurs if discrimination is found? When discrimination is found in the final decision and a class member believes that he or she is entitled to relief, the class member may file a written claim with the Finance Board within 30 calendar days of receipt of notification by the Finance Board of its final decision. The EEOC Administrative Judge retains jurisdiction over the complaint in order to resolve disputed claims by class members. The claim for relief must contain a specific showing that the claimant is a class member entitled to relief. EEOC's regulations provide that, when a finding of discrimination against a class has been made, there is a presumption of discrimination as to each member of the class. The Finance Board must show by clear and convincing evidence that any class member is not entitled to relief. The Finance Board must issue a final decision on each individual claim for relief within 90 calendar days of filing. Such decision may be appealed to the EEOC's Office of Federal Operations, or a civil action may be filed in federal court.
- J. When may a class complaint be resolved? A class complaint may be resolved at any time by agreement between the Finance Board and the class agent. Notice of such resolution must be provided to all class members and reviewed and approved by an EEOC Administrative Judge. If the Administrative Judge finds that the proposed resolution is not fair to the class as a whole, the Administrative Judge will issue a decision vacating the agreement and may replace the class agent with some other eligible class member to further process the class

complaint. Such decision may be appealed to the EEOC. If the Administrative Judge finds that the resolution is fair to the class as a whole, the resolution is binding on all class members.

XI. Mixed Case Complaints

- A. What is a Mixed Case Complaint? A “mixed case complaint” is a complaint of employment discrimination filed with a federal agency based on race, color, religion, sex, national origin, age, disability or reprisal related to or stemming from an action that may be appealed to the Merit Systems Protection Board.
- B. What is a Mixed Case Appeal? A “mixed case appeal” is an appeal filed directly with the Merit Systems Protection Board that a Finance Board action (which is appealable to the Merit Systems Protection Board) was motivated by discrimination.
- C. What is the Merit Systems Protection Board? The Merit Systems Protection Board is an administrative entity that adjudicates a defined set of personnel actions taken against covered federal employees.
- D. How is a mixed complaint identified? There are two components to a mixed case.
 - 1. The complainant must have standing. Generally, employees who have standing include:
 - a. Competitive service employees not serving a probationary or trial period under an initial appointment;
 - b. Non-competitive service veterans preference eligible employees with one or more years of current continuous service; and
 - c. Non-preference eligible excepted service employees who have completed their probationary period or with two or more years of current continuous service.
 - 2. The claim must be an appealable action. Most appealable actions fall into the following categories:
 - a. Reduction in grade or removal for unacceptable performance;
 - b. Removal, reduction in grade or pay, suspension for more than 14 calendar days, or furlough for 30 calendar days or less;

- c. Separation, reduction in grade, or furlough for more than 30 calendar days, when the action was effected because of a reduction-in-force;
 - d. Reconsideration decision sustaining a negative determination of competence for a general schedule employee; and
 - e. Disqualification of an employee or applicant because of a suitability determination.
- E. May an employee file both a mixed case complaint and a mixed case appeal? When applicable, and after EEO counseling is complete, an aggrieved person may either file a mixed case complaint with the Finance Board or file a mixed case appeal before the Merit Systems Protection Board, but not both.
- F. How does an employee know if an action is appealable to the Merit Systems Protection Board? The Finance Board will inform employees that are the subject of an action that is appealable to the Merit Systems Protection Board. The Finance Board will advise employees of their right to file either a mixed case complaint with the Finance Board or to file a mixed case appeal with the Merit Systems Protection Board.
- G. How are mixed case complaints processed? Mixed case complaints are processed similarly to other complaints of discrimination, with the following exceptions:
- 1. The Finance Board has only 120 calendar days from the date of the filing of the mixed case complaint to issue a final decision, and the complainant may appeal the matter to the Merit Systems Protection Board or file a civil action any time thereafter;
 - 2. The complainant must appeal the Finance Board's decision to the Merit Systems Protection Board, not the EEOC, within 30 calendar days of receipt of the Finance Board's decision.
 - 3. At the completion of the investigation the complainant does not have the right to request a hearing before an EEOC Administrative Judge, and the Finance Board must issue a decision within 45 calendar days.
- H. What recourse is available to an individual after the Merit Systems Protection Board issues a final decision? Individuals who have filed either a mixed case complaint or a mixed case appeal, and who have received a final decision from the Merit Systems Protection Board, may petition the EEOC to review the Merit System Protection Board's final decision.

- I. What is the process for filing a civil action? In contrast to non-mixed matters, individuals who wish to file a civil action in mixed case matters must file within 30 calendar days (not 90 days) of receipt of:
1. The Finance Board's final decision;
 2. The Merit System Protection Board's final decision; or
 3. The EEOC's decision on a petition to review.

Alternatively, a civil action may be filed after 120 calendar days from the date of filing the mixed case complaint with the Finance Board or the mixed case appeal with the Merit Systems Protection Board if there has been no final decision on the complaint or appeal, or 180 calendar days after filing a petition to review with the EEOC if there has been no decision by the EEOC on the petition.

Attachment 1
Rights and Responsibilities of Aggrieved Individuals

1. The right to anonymity.
2. The right to representation throughout the complaint process including the counseling stage. The EEO counselor should make clear to the aggrieved person that the EEO counselor is not an advocate for either the aggrieved person or the Finance Board but acts strictly as a neutral in the EEO process.
3. The right to choose between the Finance Board's alternative dispute resolution (ADR) process or EEO counseling, where the Finance Board agrees to offer ADR in the particular case, and information about each procedure.
4. The possible election requirement between a negotiated grievance procedure and the EEO complaint procedure. See EEOC Management Directive 110, Chapter 4, Section III.
5. The election requirement in the event that the claim at issue is appealable to the Merit Systems Protection Board, i.e., the dispute is a mixed case. See EEOC Management Directive 110, Chapter 4, Section II.
6. The requirement that the aggrieved person file a complaint within 15 calendar days of receipt of the Notice of Right to File a Formal Complaint in the event they wish to file a formal complaint at the conclusion of counseling or Alternative Dispute Resolution.
7. The right to file a notice of intent to sue when age is alleged as a basis for discrimination and of the right to file a lawsuit under the Age Discrimination in Employment Act instead of an administrative complaint of age discrimination, pursuant to 29 C.F.R. § 1614.201(a).
8. The right to go directly to a court of competent jurisdiction on claims of sex-based wage discrimination under the Equal Pay Act even though such claims are also cognizable under Title VII.¹
9. The right to request a hearing before an EEOC Administrative Judge except in a mixed case after 180 calendar days from the filing of a formal complaint or after completion of the investigation, whichever comes first.

¹ Sex-based claims of wage discrimination may also be raised under Title VII; individuals so aggrieved may thus claim violations of both statutes simultaneously. Equal Pay Act complaints may be processed administratively under Part 1614 of the EEOC regulations. In the alternative, a complainant in the Equal Pay Act claim may go directly to a court of competent jurisdiction.

10. The right to an immediate final decision after an investigation by the Agency in accordance with 29 C.F.R. § 1614.108(f).
11. The right to go to U.S. District Court 180 calendar days after filing a formal complaint or 180 calendar days after filing an appeal.
12. The duty to mitigate damages, e.g., that interim earnings or amounts that could be earned by the individual with reasonable diligence generally must be deducted from an award of back pay.
13. The duty to keep the Agency and EEOC informed of current mailing address and to serve copies of appeal papers on the Agency.
14. Where counseling is selected, the right to receive in writing within 30 calendar days of the first contact with an EEO counselor or the EEO Director (unless the aggrieved person agrees in writing to an extension) a notice terminating counseling and informing the aggrieved of:
 - a. the right to file a formal individual or class complaint within 15 calendar days of receipt of the Notice of Final Interview and Right to File Formal Complaint,
 - b. the appropriate official with whom to file a formal complaint, and
 - c. the complainant's duty to immediately inform the Agency if the complainant retains counsel or a representative. Any extension of the counseling period may not exceed an additional 60 calendar days.
15. Where the aggrieved person agrees to participate in an established ADR Program, the written notice terminating the counseling period will be issued upon completion of the dispute resolution process or within 90 calendar days of the first contact with the an EEO counselor or the EEO Director, whichever is earlier.
16. That only those claims raised at the counseling stage or claims that are like or related to those that were raised may be the subject of a formal complaint, and how to amend a complaint after it has been filed.
17. The identity and address of the EEOC field office to which a request for a hearing must be sent in the event that the aggrieved person files a formal complaint and requests a hearing pursuant to 29 C.F.R. § 1614.108(g).
18. The name and address of the Agency official to whom the aggrieved person must send a copy of the request for a hearing. The EEO counselor should advise the aggrieved person of their duty to certify to the Administrative Judge that they provided the Agency with a copy of a request for a hearing. See EEOC Management Directive 110, Chapter 7, Section I.

19. The time frames in the complaint process.
20. The class complaint procedures and the responsibilities of a class agent, if the aggrieved person informs the EEO counselor that they wish to file a class complaint. See EEOC Management Directive 110, Chapter 8, Section II.
21. The rejection of an Agency's offer of resolution made pursuant to 29 C.F.R. § 1614.109(c) may result in the limitation of the Agency's payment of attorney's fees or costs. See EEOC Management Directive 110, Chapter 6, Section XIII.
22. That the Agency must consolidate two or more complaints filed by the same complainant after appropriate notice to the complainant. See 29 C.F.R. § 1614.606. The Agency should advise the complainant that when a complaint has been consolidated with one or more earlier complaints, the Agency shall complete its investigation within the earlier of 180 calendar days after the filing of the last complaint or 360 calendar days of the filing of the first complaint and that the complainant may request a hearing before an EEOC Administrative Judge at any time after 180 calendar days of the filing of the first complaint.

**Federal Housing Finance Board
Equal Employment Opportunity Handbook**

Appendix B – Alternative Dispute Resolution Policy

I. Purpose and Focus

The Federal Housing Finance Board's (Finance Board or Agency) Alternative Dispute Resolution (ADR) Program is a part of the Agency's Equal Employment Opportunity (EEO) complaint process. ADR is a generic term used to describe a variety of techniques, methods or processes designed to resolve conflict at the earliest opportunity and lowest level possible.

The primary purpose of the Finance Board's ADR Program is to provide an alternative procedure for resolving allegations of discrimination addressed through the EEO process. The ADR Program is designed to be efficient, expeditious and cost-effective while retaining the legal and administrative due process rights of the parties involved. This Program integrates the ADR process into the Agency's Federal EEO complaint process.¹ However, it is not a substitute for the EEO complaint process.

Some characteristics of the ADR program are that:

- it is voluntary for the aggrieved individual;
- its can be terminated at any time within the prescribed time frames without loss of rights;
- it can shift the process from conflict to problem solving;
- disputants are responsible for finding the solution;
- it employs the use of neutral, objective individuals; and
- its intent is to produce a solution acceptable to the parties involved.

¹ According to EEOC regulations, if ADR is offered and the aggrieved individual elects to participate, the pre-complaint counseling period is extended to 90 days. All timeframes set forth in this ADR Program will be adhered to as closely as possible. However, there may be occasions or extenuating circumstances where Agency requirements/resources or the need to meet aggrieved individual's requirements may cause the established timeframes to lapse or exceed what had been set forth. ADR will, however, be completed within 90 days of aggrieved individual's initial contact with an EEO counselor or the EEO Director. If the aggrieved individual believes they have been subjected to undue delay, they have a right to request that the processing of their complaint continue.

The ADR Program focuses on dispute resolution in the informal and formal stages of the EEO process and is intended to:

- Reduce the average processing time of complaints;
- Prevent the escalation of disputes into multiple complaints of discrimination;
- Increase the total number of complaints/disputes resolved at the informal stage;
- Enhance the overall morale and cooperation of employees and supervisors;
- Increase the confidence of employees and managers in the Agency's EEO process;
- Increase active participation in problem-solving by all involved parties, thereby potentially reducing the number of future disputes; and
- Reduce the costs associated with the processing of complaints.

Overall, the ADR Program is intended to preserve the integrity of ongoing working relationships and to empower employees and managers with the opportunity to resolve their disputes rather than placing control with an outside decision-maker. Accordingly, those closest to the substance of the problem can design and implement settlement.

II. Program Description

The Finance Board's ADR Program is designed to be a fair, neutral and objective process. Aggrieved individuals have the right to representation throughout the complaint process, including ADR. The aggrieved individual must provide the name of his or her representative to the EEO Director when a formal complaint has been filed or if there is a desire to include a representative during the ADR process. The aggrieved individual has a responsibility to cooperate in the ADR process once he or she has elected to participate. However, the aggrieved individual has the right to withdraw from ADR proceedings at any time during the established time frames without loss of rights. The Finance Board, as well, has the right to terminate ADR at any time during the process when it is no longer practical to continue because of the lack of agreement on issue(s) after a reasonable period of time.

Supervisors have a duty to cooperate in the ADR Program once the Finance Board has determined that a matter is appropriate for ADR. The Agency will encourage parties, particularly management, to continue attempting to resolve disputes throughout the complaint process, whether through ADR or any other means of informal settlement. However, no one can force a resolution on the parties.

Agreements created by the parties during the process will be enforced. The Finance Board will make accessible an individual with settlement authority during the ADR process and no responsible management official directly involved in the case will serve as the person with settlement authority. No documentation or record of deliberations during the ADR proceeding will be maintained. While the purpose of ADR is to allow the parties to fashion their own resolution to a dispute, both parties are provided the opportunity to be represented by any person of their choosing throughout the proceeding.

Nothing said or done during attempts to resolve the complaint through ADR can be made the subject of an EEO complaint. Likewise, a Finance Board decision not to engage in ADR, or not to make ADR available for a particular case can be made the basis for an EEO complaint.

III. Scope

An ADR Program serves to enhance the EEO complaint process through a forum that provides participation of supervisors and employees in resolving employment matters through ADR at the earliest stage of the complaint process. ADR can occur at anytime in the EEO process (e.g., counseling, after filing a formal complaint, investigation, after a hearing or final agency decision has been requested, or after an appeal by a complainant). Aggrieved individuals will be required to initiate EEO counseling prior to being considered for ADR. The issues to be considered for ADR will be determined on a case-by-case basis taking into consideration such factors as the nature of the case, the relationship of the parties, the size and complexity of the case and the relief sought by the complainant.

The decision to offer ADR will be, as stated previously, determined on a case-by-case basis. Although there are several ADR techniques available, those that will most commonly be used by the Finance Board will be mediation, fact-finding or a combination of both. However, the Finance Board will not use ADR:

- A. Where statutes or regulations preclude the use of such techniques;
- B. Where the Finance Board EEO Director, in consultation with the Office of General Counsel or Office of Inspector General, believes a dispute involves a willful or criminal violation of law;
- C. Where, for any reason, the EEO Director, in consultation with the Office of General Counsel, believes it is necessary or preferable to proceed with traditional EEO complainant processing in light of the facts of the case; and
- D. Where class complaints are involved.

IV. Role of ADR Administrators

The ADR Program function involves individuals that have an expertise in ADR techniques, an expertise in the EEO complaint process, and Agency authority to resolve disputes. Their skill and coordination is key to a successful program. These individuals include:

EEO Director: The Finance Board's EEO Director has overall responsibility for the development, implementation, and evaluation of the ADR Program. The EEO Director will provide oversight of the activities and will aid in obtaining a Neutral party. The EEO Director will confer with the EEO counselor to ensure that appropriate assistance is provided to allow individuals with disabilities to effectively participate in all ADR activities. The EEO Director will monitor and evaluate the ADR Program on a continuous basis and propose revisions as necessary.

Finance Board Representative: The Finance Board Representative is appointed to participate on management's behalf during the ADR proceeding and has authority to attend ADR proceedings. The Finance Board Representative has the authority, after consultation with appropriate management officials, to resolve the dispute by entering into a settlement agreement with the aggrieved individual.

EEO Counselor: The EEO counselor advises aggrieved individuals of the possibility of participating in ADR. EEO counselors have the responsibility to advise aggrieved individuals that, in cases where the Finance Board agrees to offer ADR, the aggrieved individual may choose between ADR and EEO counseling services.

V. Role of the Neutral Party

The Neutral is responsible for ensuring that ADR proceedings are conducted consistent within the law and EEOC regulation, including case processing time frames. The Neutral ensures that (a) proceedings are fair and consistent with the EEOC's core principles of ADR; (b) representatives participating in ADR proceedings have the necessary authority; and (c) a person with delegated authority to approve a settlement agreement is accessible.

Although the Finance Board may utilize various ADR techniques, the Neutral is responsible for accomplishing the following basic objectives during an ADR proceeding. These objectives will be achieved jointly and/or separately with the parties, depending upon the method being utilized:

1. Explain their role in the process including the purpose of the proceeding;
2. Obtain consensus/agreement by both parties for participation in the process;

3. Encourage the parties to vent and diffuse feelings;
4. Clear up misunderstandings;
5. Determine underlying interests/concerns and facts in dispute;
6. Improve the flow of information;
7. Conduct joint and/or private sessions;
8. Find areas of agreement; and
9. Incorporate the areas of agreement into a solution devised by and acceptable to all parties concerned.

The Neutral is also responsible for the preparation of the written settlement agreement and obtaining the signatures of the Finance Board Representative and aggrieved person.

The Neutral will ensure confidentiality, including destroying all written notes taken during the ADR proceeding or in preparation for the proceeding. The Neutral will ensure neutrality, including having no conflict of interest with respect to the proceeding unless such interest is fully disclosed in writing to all parties and all parties agree that the Neutral may serve.

The Finance Board will use Neutrals for its ADR Program, subject to their qualifications, from the following sources: (1) other federal agencies, or (2) private organizations, private contractors or bar associations.

VII. Incorporating ADR into the EEO Process

The procedures to be followed in the EEO complaint process and in utilizing ADR in an attempt to resolve an EEO complaint are as follows:

A. Informal Complaint Process

1. An employee or applicant for employment must contact an EEO counselor or the EEO Director within 45 days from the date of the alleged discriminatory act. The EEO Director will assign an EEO counselor to the employee or applicant. The assigned EEO counselor will apprise the aggrieved individual of their rights, conduct an inquiry and attempt to resolve the dispute informally.
2. If the informal attempt to resolve the dispute is successful, the terms of the agreement will be reduced to writing and signed by the appropriate parties.

3. If informal resolution is not apparent or fails prior to the 30th day of counseling, the EEO counselor and EEO Director will discuss the case. This discussion will occur prior to the Finance Board presenting the ADR option to the aggrieved individual.
4. If the aggrieved individual is offered ADR and declines, the processing of the complaint will continue pursuant to EEOC regulations.
5. If the aggrieved individual is offered and elects ADR, the EEO counselor will terminate counseling but will not issue a Notice of Final Interview and Right to File Formal Complaint. The aggrieved individual will be provided with an ADR letter of consent. The letter of consent will explain that the signed agreement should be submitted to the EEO Director within five calendar days of receipt. The 90-calendar day pre-complaint processing period will be determined from the date of initial contact with an EEO counselor or the EEO Director.
6. The Finance Board will expeditiously assign a Neutral. The dispute resolution process will commence no later than 30 calendar days from the date of the initial counseling interview and conclude within 20 calendar days from the date the Neutral is assigned.
7. If ADR is successful, the parties will sign a written agreement. The agreement will normally include a provision that requires the complainant to withdraw his or her complaint with prejudice.
8. If no agreement is reached, the EEO Director will notify the EEO counselor and the counselor will issue the Notice of Final Interview and Right to File Formal Complaint and close the informal EEO counseling process. If a Counselor's Report is prepared, it will only state that attempts at informal resolution and/or ADR failed.
9. The Neutral is authorized to request documentation and information pertinent to the issues prior to the ADR proceeding, if necessary.
10. If either party to a resolution subsequently alleges breach of the agreement, the EEO Director will make appropriate inquiries and will determine whether the reopening of the EEO complaint is appropriate or if an administrative resolution of the alleged breach is feasible. Under EEOC regulations, if the aggrieved individual is not satisfied with the Finance Board's attempt to resolve the matter, the individual may appeal to the EEOC for a determination as to whether the Finance Board has complied with the terms of the settlement agreement. The aggrieved individual may file an appeal 35 calendar days after serving the Finance Board with the allegations of

noncompliance, but must file an appeal within 30 calendar days of receiving the Agency's determination.

B. Formal Complaint Process

ADR will be considered for complainants after the filing of a formal complaint, after acceptance and/or investigation, after a request for hearing or final agency decision, and after an appeal has been filed. An initial ADR intake session may be conducted after filing a formal complaint, notification by the investigator that the complainant is interested in ADR, or after a request for a final agency decision. The timetable for assigning a Neutral, if required, and completing the ADR process will be identical to the time periods established under the informal complaint process. If an agreement is reached, it will be documented and the complainant agrees to withdraw his or her formal complaint.

VII. Recordkeeping

No information obtained during the ADR proceedings will be available for use in formal complaint proceedings, except for (a) information contained in official complaint files, (b) the written agreement, if any, (c) a statement that ADR was attempted and failed, and (d) a chronological record of the actions by the Finance Board in an attempt to utilize ADR in the EEO process. In no event will Neutrals serve as witnesses in subsequent administrative or court actions involving their assigned complaint.

VIII. Accommodation Based Upon The Americans With Disabilities Act

The Americans with Disabilities Act (ADA) of July 26, 1990, contained certain standards that were made applicable to Federal government and incorporated into the Rehabilitation Act of 1973. These regulations prohibit discrimination against qualified individuals with physical or mental disabilities, and require that Federal agencies take positive steps in the hiring, placement, and advancement of those persons including granting them reasonable accommodation, where appropriate. With regard to administering the ADR Program, parties will be reasonably accommodated, as necessary.

Accommodations for individuals with disabilities, however, are not mandatory if the Finance Board demonstrates that in providing such accommodations, an undue financial or administrative burden will be created, or that the accommodation will alter the fundamental nature of the program or activity. As previously stated, the Finance Board will determine on a case-by-case basis whether it is appropriate to offer ADR.

IX. Program Evaluation

At the completion of ADR, whether successful or not, the EEO Director will request that the aggrieved individual and the supervisor complete evaluation forms. See Attachments 1 and 2. The evaluation will assist in determining whether the ADR Program has achieved its goals and will provide feedback on how the Program might be made more efficient and achieve better results.

Attachment 1

**Federal Housing Finance Board
Alternative Dispute Resolution Program**

Complainant (or Counselee) Evaluation of ADR Program

Your answers to the following questions will help the Finance Board improve the ADR Program. All responses will be kept confidential.

1. The ADR proceeding was:

☐ Very Satisfactory
☐ Satisfactory
☐ Unsatisfactory
☐ Very Unsatisfactory

Please provide your comments:

2. The Neutral (check one):

☐ seemed to treat both parties the same.
☐ seemed to favor one party over the other.

3. The Neutral (check one):

☐ came up with a resolution and encouraged us to accept it.
☐ helped us think of different ways we could settle issues.
☐ expected us to come up with solutions ourselves.

4. Did you reach an agreement?

☐ Yes
☐ No,

because: _____

5. If you reached agreement, do you consider it to be:
- ☐ Very fair
 - ☐ Fair
 - ☐ Unfair
 - ☐ Very Unfair
6. Did the ADR proceeding change your opinion of the other person?
- ☐ I feel more positive towards the other.
 - ☐ There is no change in my opinion of the other.
 - ☐ I feel more negative towards the other.
7. To try and resolve this dispute, did you talk with anyone before contacting the EEO Director?
- ☐ No.
 - ☐ Yes, I talked to:
 - ☐ Co-worker
 - ☐ Friend
 - ☐ Supervisor
 - ☐ Human Resources
 - ☐ Other _____
8. If you ever have a similar dispute again, would you:
- ☐ Talk to the party in dispute first?
 - ☐ Talk to another person? If so, would you talk to:
 - ☐ Co-worker
 - ☐ Friend
 - ☐ Supervisor
 - ☐ Human Resources
 - ☐ Other _____
9. Please provide any additional comments you have in regards to the ADR proceeding.

Attachment 2

**Federal Housing Finance Board
Alternative Dispute Resolution Program**

Supervisor Evaluation of ADR Program

Your answers to the following questions will help the Finance Board improve the ADR Program. All responses will be kept confidential.

1. The ADR proceeding was:

☐ Very Satisfactory
☐ Satisfactory
☐ Unsatisfactory
☐ Very Unsatisfactory

Please provide your comments:

2. The mediator (check one):

☐ seemed to treat both parties the same.
☐ seemed to favor one party over the other.

3. The mediator (check one):

☐ came up with a resolution and encouraged us to accept it.
☐ helped us think of different ways we could settle issues.
☐ expected us to come up with solutions ourselves.

4. Did you reach an agreement?

☐ Yes
☐ No,

because: _____

5. If you reached agreement, do you consider it to be:
- ☐ Very fair
 - ☐ Fair
 - ☐ Unfair
 - ☐ Very Unfair
6. Did the ADR proceeding change your opinion of the other person?
- ☐ I feel more positive towards the other.
 - ☐ There is no change in my opinion of the other.
 - ☐ I feel more negative towards the other.
7. Please provide any additional comments you have in regards to the ADR proceeding.

**Federal Housing Finance Board
Equal Employment Opportunity Handbook**

Appendix C – Reasonable Accommodation Policy

I. What is a reasonable accommodation?

A reasonable accommodation is any change in the work environment or in the way things are customarily done that would enable a qualified individual with a disability to enjoy equal employment opportunities.

The Federal Housing Finance Board (Finance Board or Agency) provides reasonable accommodation to qualified employees or applicants with disabilities unless the accommodation would create an undue hardship on the operation of the Agency. A person with a disability is qualified for a job if they can perform the essential functions of that job with or without reasonable accommodation.

II. When does the Finance Board provide reasonable accommodations?

The Finance Board provides reasonable accommodations when an:

- A. applicant with a disability needs an accommodation in order to be considered for a job;
- B. employee with a disability needs an accommodation to enable them to perform the essential functions⁶ of a job or to gain access to the workplace; and
- C. employee with a disability needs an accommodation to enjoy benefits and privileges of employment.

III. What constitutes a request for a reasonable accommodation?

A request for reasonable accommodation is a statement that an individual needs an adjustment or change at work, in the application process, or in a benefit or privilege of employment for a reason related to a medical condition

⁶ Essential functions are those job duties that are so fundamental to the position that the individual holds or desires that he or she cannot do the job without performing them. A function can be “essential” if, among other things: the position exists specifically to perform that function; there are a limited number of other employees who could perform the function; or the function is specialized and the individual is hired based on his or her ability to perform it. Determination of the essential functions of a position must be done on a case-by-case basis so that it reflects the job as actually performed and not simply the components of a generic position description.

IV. When do I have the right to request a reasonable accommodation?

An individual with a disability may request a reasonable accommodation whenever they choose, even if they have not previously disclosed the existence of a disability.

V. Who may make the request for a reasonable accommodation? How is the request made?

- A. An employee may request a reasonable accommodation orally or in writing from their supervisor, another supervisor or manager in their chain of command, the office director, or the Director of Office of Management.
- B. An applicant may request a reasonable accommodation orally or in writing from any Office of Management employee with whom the applicant has contact in connection with the application process.
- C. A health professional or other representative may request an accommodation on behalf of an employee or applicant. An oral or written request should go to one of the same persons to whom the employee or applicant would make the request.

VI. May the Finance Board request medical information from the individual seeking a reasonable accommodation?

The Finance Board is entitled to know that an individual has a covered disability that requires reasonable accommodation. The Finance Board may ask for information about the disability, the activity limits, and the need for accommodation, provided that the disability and/or need for accommodation is not obvious, or if the information already submitted by the individual is insufficient for the Finance Board to make these determinations. Medical information provided may only be disclosed to those involved in determining whether to grant the reasonable accommodation. Under the Rehabilitation Act, medical information in connection with the reasonable accommodation must be kept confidential.

VII. What are the time frames for processing reasonable accommodation requests?

The Finance Board will process requests for reasonable accommodation and provide accommodations, where they are appropriate, in as short a time frame as reasonably practicable. The time necessary to process a request will depend on the nature of the accommodation and whether it is necessary to obtain supporting information.

VIII. What occurs if a request for a reasonable accommodation is granted?

As soon as the Finance Board determines that a reasonable accommodation will be provided, the individual will be notified immediately. If the accommodation cannot be provided immediately, the Finance Board will inform the individual of the

projected time frame for providing the accommodation. This notice will be in writing.

IX. What occurs if a request for a reasonable accommodation is denied?

If the Finance Board denies a request for reasonable accommodation, it must inform the individual in writing of the denial and the specific reasons for it. The written notice will notify the individual that they have a right to file an EEO complaint. The notice will also explain the Finance Board's procedures for informal dispute resolution.

X. How are denials challenged?

Individuals with disabilities can request prompt reconsideration of a denial of reasonable accommodation. If an individual wishes reconsideration, they should ask the Director of the Office of Management to reconsider the decision. The individual may present additional information in support of their request. If the Director of the Office of Management does not reverse the decision, the individual can ask the Chairperson to do so. An individual's participation in any or all of these informal resolution processes does not satisfy the requirements of bringing a claim under Equal Employment Opportunity or the Merit Systems Protection Board.

**Federal Housing Finance Board
Equal Employment Opportunity Handbook**

Appendix D – Sexual Orientation Discrimination Guidance

I. Overview

The Executive Branch has a policy, and the Federal Housing Finance Board (Finance Board or Agency) is committed to, prohibiting discrimination on the basis of sexual orientation. Executive Order 13087 states, as a matter of Federal policy, that a person's sexual orientation should not be the basis for the denial of a job or a promotion. The purpose of this Guidance is to make Finance Board employees and applicants aware of how to obtain help if they believe they have been discriminated against based upon their sexual orientation. This Guidance outlines various avenues of redress.

II. Legal Protections

The Civil Service Reform Act of 1978 describes prohibited personnel practices. One of them, contained in 5 U.S.C. § 2302(b)(10), prohibits any employee who has authority to take certain personnel actions from discriminating for or against employees or applicants for employment on the basis of conduct that does not adversely affect employee performance. The Office of Personnel Management has interpreted this statute to prohibit discrimination based upon sexual orientation. Sexual orientation means homosexuality, bisexuality, or heterosexuality.

When applicants or employees believe that a prohibited personnel practice has been committed against them that constitutes discrimination based upon sexual orientation, they may seek assistance under certain circumstances from:

- A. Merit Systems Protection Board
- B. Office of Special Counsel
- C. Finance Board Grievance Procedure

Employees and applicants may not seek relief from the Equal Employment Opportunity Commission or file a discrimination complaint under Title VII of the Civil Rights Act of 1964, as amended, because that law does not prohibit discrimination based upon sexual orientation.

Most of the available procedures require employees or applicants to raise the allegations within a specific time frame from the date that the alleged discrimination occurred. The following sections provide basic and general information about these procedures and the circumstances under which each can be used. Under some

circumstances, more than one procedure may be available, and the choice of one procedure may preclude the use of others.

A cautionary note: The Federal employee appeals process can, at times, seem confusing because of the overlapping authority of several different agencies and different appeal routes and time limitations. This guide is intended to be a general introduction to possible remedies for discrimination based upon sexual orientation. It is not intended to be a substitute for legal advice on the best course of action for a particular employee.

A. Merit Systems Protection Board (MSPB)

If you wish to appeal an Agency action, you should contact the MSPB at the addresses listed below as soon as possible after the action was taken to determine whether it is an action upon which the MSPB may rule.

The MSPB is an independent body that hears, among other things:

- Appeals from certain agency personnel actions, which are set forth in regulations contained in Section 1201.3 of Title 5, Code of Federal Regulations. These include removals, suspensions for more than 14 days and reductions in grade and pay of certain Federal employees who possess tenure.
- Cases brought by the Special Counsel involving alleged prohibited personnel practices.

These two procedures for bringing cases before the MSPB are more fully outlined below.

Appeals: When employees or applicants challenge one of the actions described above by filing an appeal within the jurisdiction of MSPB, they may also allege that the personnel action being appealed was based upon a prohibited personnel practice. If the employee establishes that it is more likely than not that this was the basis for the agency's personnel action, the personnel action will not be sustained.

Cases Brought by the Special Counsel: If the personnel action is not one appealable to the MSPB, employees and applicants must seek the assistance of the Office of Special Counsel, which has authority to investigate and to petition MSPB on behalf of the employee or applicant. The procedures for seeking the assistance of the Office of Special Counsel are described below.

Appeal Procedures: Very generally, an MSPB appeal proceeds as follows:

- A person files an appeal with one of the MSPB's regional offices. The addresses of the regional offices are contained in MSPB's regulations.
- The administrative judge assigned to the case determines whether an appeal is filed within the time limits and whether the agency personnel action complained of properly may be the subject of an appeal.
- If an appeal meets these requirements, the employee or applicant has the right to choose between a hearing and a decision on the written record.
- When an administrative judge issues a decision, either the employee or applicant or the agency may ask the full MSPB to review any part of the decision that is thought to be erroneous.
- Employees or applicants may seek judicial review of an MSPB decision. An agency may not. However, the United States Office of Personnel Management (OPM) may seek judicial review when the Director of OPM believes that the MSPB's decision is erroneous and will have a substantial impact on civil service law.

The procedures that MSPB follows are contained in Title 5, Code of Federal Regulations, Part 1201.

Additional Information about the Merit Systems Protection Board may be obtained from their web site, www.mspb.gov. You may contact the MSPB's headquarters at (202) 653-7200 or (800) 209-8960, or by mail at: Merit Systems Protection Board, 1120 Vermont Avenue, N.W., Washington, DC 20419.

B. The Office of Special Counsel

If you think you have been discriminated against based upon sexual orientation, you may wish to contact Office of Special Counsel at the address listed below.

The Office of Special Counsel is an independent investigative and prosecutorial agency within the Executive Branch that receives and investigates complaints alleging prohibited personnel practices, including those involving discrimination based upon sexual orientation.

The Office of Special Counsel:

- Receives and investigates allegations from applicants, employees and former employees of prohibited personnel practices and investigates allegations to determine whether there are reasonable grounds to believe

that the agency has committed a prohibited personnel practice or will do so.

- May request MSPB to stop personnel actions from taking place while it is investigating whether they were taken as a result of a prohibited personnel practice. These prohibited personnel practices include 5 U.S.C. § 2302(b)(10), which prohibits discrimination based on conduct that does not adversely affect either the employee's own job performance or the performance of others.
- May petition MSPB for corrective action to provide a remedy for the employee.
- May seek disciplinary action by MSPB against the individuals who committed a prohibited personnel practice.
- May achieve favorable results for employees without litigation before MSPB by achieving settlements of complaints prior to the initiation of any formal appeal to MSPB. May act as an intermediary between the employee and the Agency to resolve issues. May seek an informal stay of a personnel action to prevent imminent harm when it has reasonable grounds to believe the employee has been subjected to a prohibited personnel practice.

The procedures for corrective action by the Special Counsel are set forth in detail in 5 U.S.C. § 1214. The procedures for disciplinary action are contained in 5 U.S.C. § 1215.

Additional information about how the Office of Special Counsel operates may be obtained from the Office of the Special Counsel, 1730 M Street, N.W., Suite 300, Washington, DC 20036-4505. The Office of Special Counsel's telephone numbers are: Complaints Examining Unit (202) 653-7188 (TDD-ready); Toll Free (800) 872-9855 (TDD-ready); Public Information (202) 653-7984. The Office of Special Counsel has a web site at www.osc.gov.

Complaints to the Office of Special Counsel must be in writing; complaint forms may be downloaded from the Office of Special Counsel's web site. Complaints should be sent to the Complaints Examining Unit at the above address.

C. Administrative Grievance Procedure

Another possible area of redress for those who feel victimized by discrimination based upon sexual orientation is the Finance Board's Administrative Grievance Procedure.

Appendix D
Sexual Orientation Discrimination Guidance

In general, this system encourages informal and voluntary resolution of employment-related grievances to the extent appropriate. Employees who believe that they have not been treated fairly have a right to present formal grievances for prompt and equitable consideration and resolution, without fear of restraint, reprisal, coercion, retaliation, or interference. Specific procedures and time limitations can be found in the Finance Board's Administrative Grievance Procedures.